City of Lafayette Staff Report

To:	City Council
From:	Mike Moran, Associate Engineer
Date Written:	July 16, 2009
Meeting Date:	August 10, 2009
Subject:	701 Glenside Circle – Request for a six-foot wood fence and a wood fence on a masonry retaining wall that encroaches into the public right-of-way

---

Introduction

Thomas E. Capp owns the property at 701 Glenside Circle. Mr. Capp is requesting permission to construct a six-foot wood fence along this property frontage, with a section of the fence on a masonry retaining wall. These additions will require an encroachment agreement because they will be placed in the public right-of-way. Staff recommends approval of the agreement.

Discussion

The property is located at the southwest corner of the intersection of Glenside Circle and Glenside Drive. The City's right-of-way along the subject property is approximately 4 feet behind the existing edge of pavement on Glenside Circle and approximately 24 feet behind the existing edge of pavement on Glenside Drive. The attached plan (Figure 1) shows the locations of the proposed fence, the approximate property line, and the existing edge of pavement. Figure 2 shows dimensioned details for the wood fence and masonry retaining wall.

The new fence and retaining wall is to replace the existing chain link fence and wood wall which currently encroach into the public right-of-way. It will be installed along the same alignment as the existing fence. The existing fence has been in place for many years and has not created any problems. It is setback approximately 13 feet from the edge of existing pavement at its nearest location to the street and therefore provides adequate space for any future sidewalk or other roadside improvements installed by the city. Additionally, Mr. Capp's neighbors are in support of the proposed fence and alignment. A signed letter expressing their support of this project is attached to this report.

Realigning the new fence along the property line would be problematic because it would interfere with existing trees (mature oak, redwood, and pine) and would require substantial grading due to the topography of the site. Pictures of the existing fence and trees are shown in Figures 3-6. Since the proposed work will simply replace the existing fence and wall (same alignment, same height, but different materials) and should not impact future city projects or impede the line of sight for motorists or pedestrians, staff supports the project.

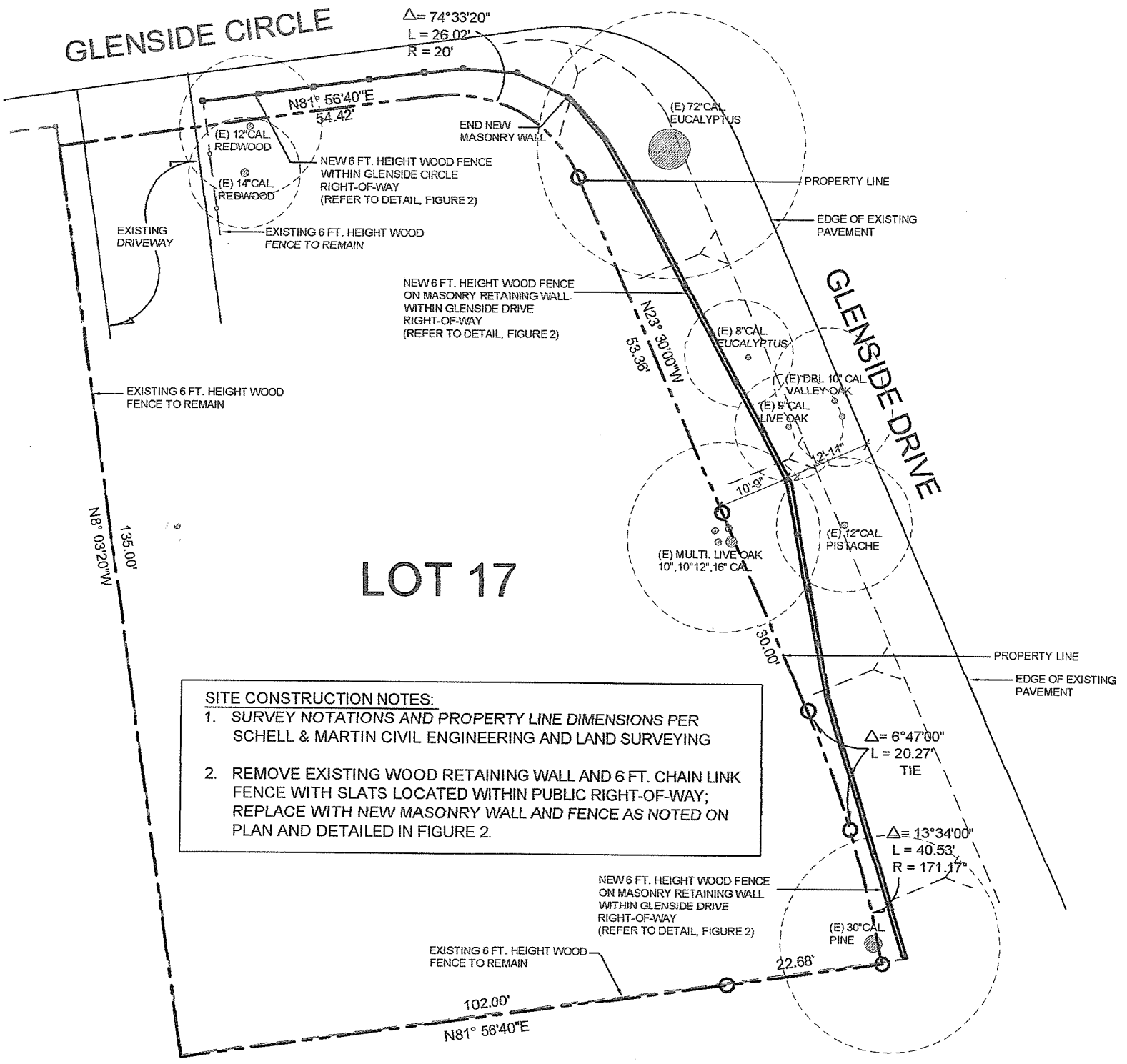
Fiscal Impact

None

Recommendation

Approve the encroachment into the City right-of-way along the property of 701 Glenside Circle and authorize the City Manager to execute an encroachment agreement with the applicant.

Attachment: Agreement for 701 Glenside Circle



SITE CONSTRUCTION NOTES:

1. *SURVEY NOTATIONS AND PROPERTY LINE DIMENSIONS PER* SCHELL & MARTIN CIVIL ENGINEERING AND LAND SURVEYING
2. REMOVE EXISTING WOOD RETAINING WALL AND 6 FT. CHAIN LINK FENCE WITH SLATS LOCATED WITHIN PUBLIC RIGHT-OF-WAY; *REPLACE WITH NEW MASONRY WALL AND FENCE AS NOTED ON* PLAN AND DETAILED IN FIGURE 2.

FIGURE 1

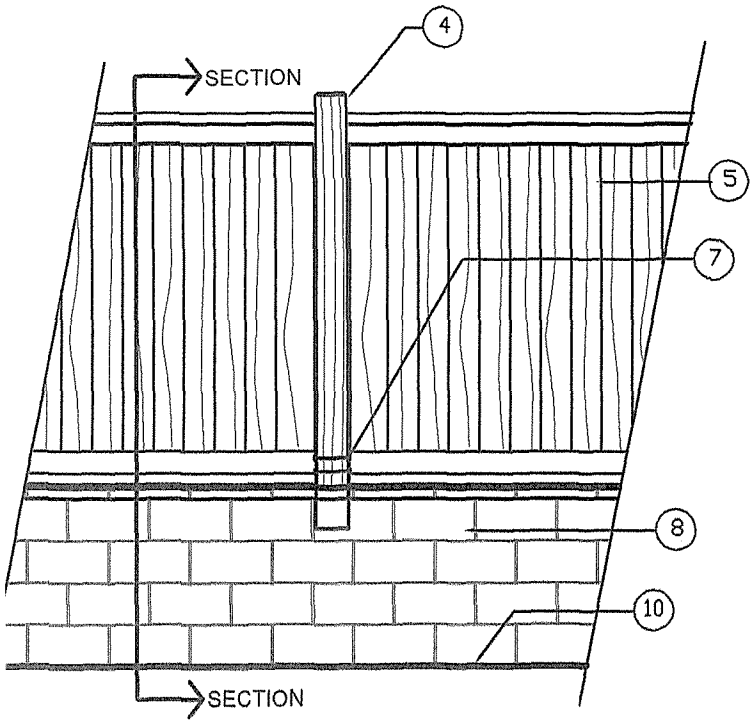
RETAINING WALL AND FENCING PLAN

NORTH
SCALE: 1" = 20'-0"

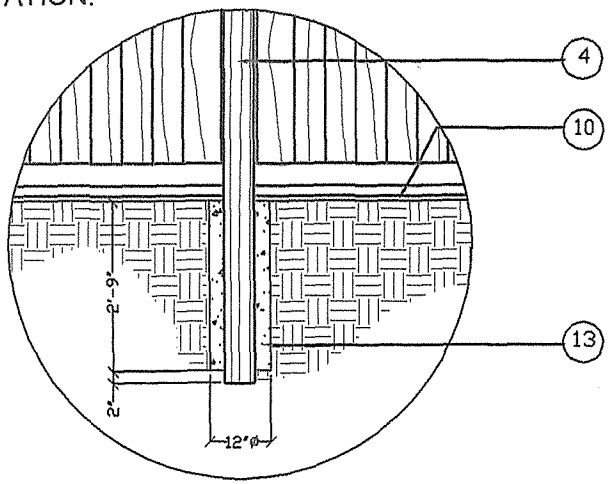
THE CAPP RESIDENCE

701 GLENSIDE DRIVE
LAFAYETTE, CA 6/25/09

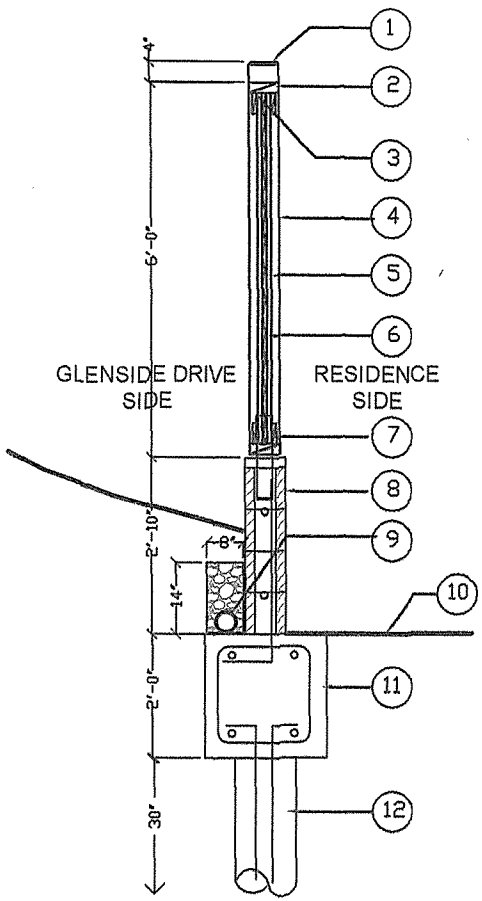
REGISTERED LANDSCAPE ARCHITECT
RICHARD STOVER
3017
Signature
Date
Expires 5/31/10
STATE OF CALIFORNIA



ELEVATION:



INSET: POST AT GRADE



SECTION:

1 1" CHAMFER TOP ON POSTS

2 2"X6" TOP AND BOTTOM RAILS

3 1"X4" TOP & BOTTOM NAILERS

4 6"x6" PTDF POST @ 8' O.C. (MAX.)

5 1"x6" R.S. CLEARHEART RDWD BOARDS SET WITH EDGES ABUTTED

6 CONTINUOUS 1/2" THICK LOADED VINYL SHEET EXTENDING TOP TO BOTTOM SANDWICHED BETWEEN 1X6 BOARDS

7 'SIMPSON' #LCB66 GALVANIZED COLUMN BASE WET-SET IN CAVITY OF MASONRY WALL - SECURE POST W/ (2) 1/2" DIA. THREADED RODS, HEX NUTS W/ WASHERS, CUT AND GRIND ROD ENDS SMOOTH

8 SPLIT-FACE MASONRY WALL (FACING YARD) WITH 2X MASONRY CAP; PROVIDE #4 BAR AT 16" O.C. EACH WAY, GROUT ALL CELLS SOLID; EXTEND VERT. BARS INTO FTG.

9 3" PERF. PIPE WRAPPED IN MIRAFI FABRIC IN 3/4" DRAINROCK; CONTINUOUS ALONG BASE OF WALL.

10 FINISH GRADE IN REAR YARD

11 24'X24" CONTINUOUS CONCRETE FOOTING W/ (4) #4 HORIZ. BAR AND #4 LOOP AT 16" ON CENTER SPACING

12 12" DIAMETER CONCRETE PIER W/ (2) #4 VERT. BAR, EXTEND UP INTO CONC. FOOTING; SET AT 8 FT. SPACING

12 12" DIAMETER CONCRETE FOOTING AT EACH FENCE POST; SET POST 2" BELOW CONC.

NOTES:
1. POSTS SHALL BE PT DOUG. FIR, 1X6 BOARDS SHALL BE CLEAR HEART REDWOOD.
2. ALL RAILS AND NAILERS SHALL BE ROUGH SAWN CON. HRT. REDWOOD
3. HOLD TOP RAILS LEVEL; STEP FENCE & ALTER PANEL WIDTH AS NECESSARY TO CONFORM TO GRADES.

WOOD FENCE AND RETAINING WALL DETAIL

NO SCALE

FIGURE 2

THE CAPP RESIDENCE

701 GLENSIDE DRIVE
LAFAYETTE, CA 6/25/09

Figure 3- Existing Fence along Glenside Drive

Figure 4- Existing Fence and Trees in Backyard along Glenside Drive

Figure 5- Existing Fence and Trees on Glenside Circle

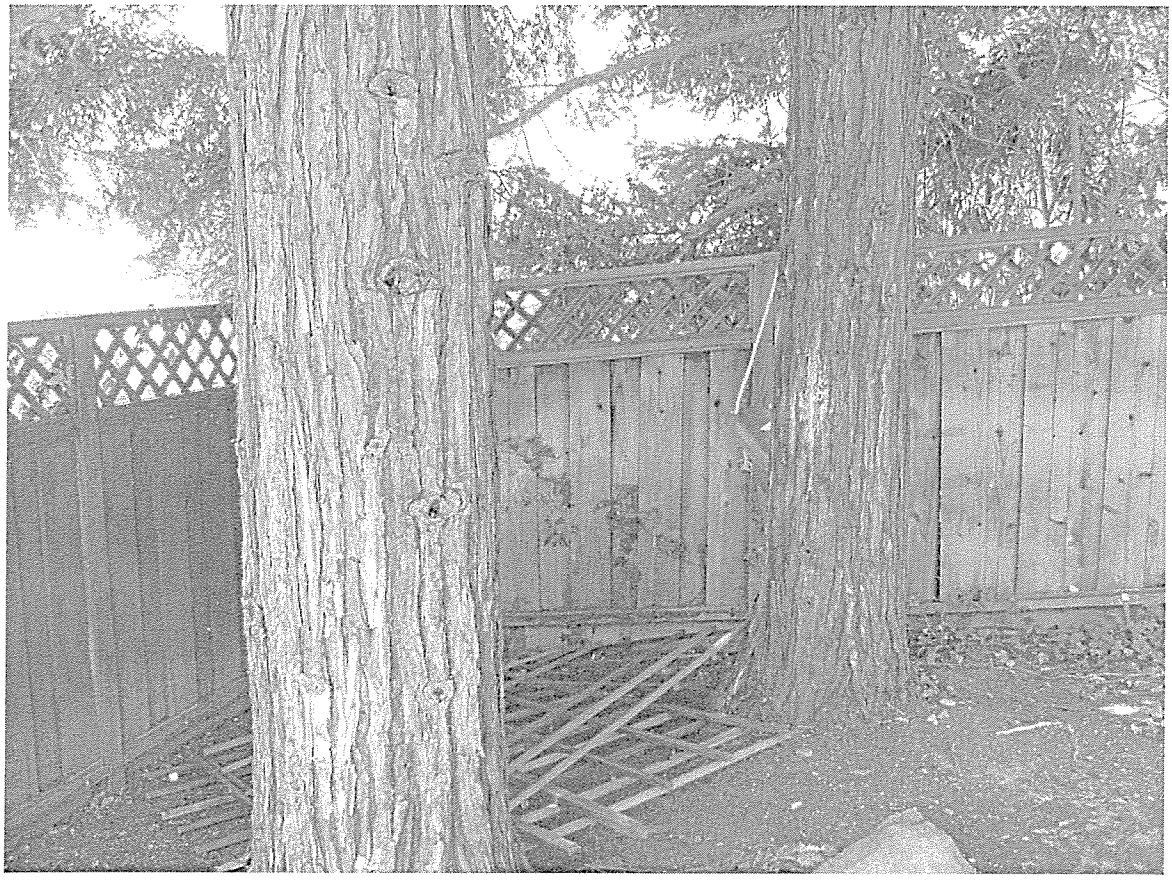


Figure 6- Existing Fence and Trees in Backyard at Corner of Glenside Drive and Glenside Circle

June 2009

701 Glenside Circle, Lafayette, CA
Capp Family

We support the Capp family plan to replace the current fence around their property with the proposed redwood fence and masonry retaining wall.

Signature	Address
Patricia Butler	755 Glenside Dr
Murray Proffitt	707 Glenside Circle
	708 Glenside Circle
	711 Glenside Circle
	736 GLENSIDE CR.
Bethany VanAlyea	3307 Glenside Dr.
	737 Glenside Circle
	717 Glenside Circle
	715 Glenside Circle
Shelley Jones	737 Glenside Drive

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of a six-foot wood fence and a six-foot wood fence on a masonry retaining wall within a Public Right-of-Way along Glenside Circle and Glenside Drive at 701 Glenside Circle.

This Agreement is entered into on August 10, 2009 between Thomas E. Capp and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 701 Glenside Circle Lafayette, California, APN 236 012 023 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to construct a six-foot wood fence and a six-foot wood fence on a masonry retaining wall which will encroach into the public right-of-way along Glenside Circle and Glenside Drive at 701 Glenside Circle. In connection with his request for an encroachment permit, Property owner has submitted plans to the City for the construction and the placement of a six-foot wood fence and a six-foot wood fence on a masonry retaining wall.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of the six-foot wood fence and a six-foot wood fence on a masonry retaining wall

Property Owner is permitted to place a six-foot wood fence and a six-foot wood fence on a masonry retaining wall which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Glenside Circle and Glenside Drive at 701 Glenside Circle, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of a six-foot wood fence and a six-foot wood fence on a masonry retaining wall within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the six-foot wood fence and a six-foot wood fence on a masonry retaining wall installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the six-foot wood fence and a six-foot wood fence on a masonry retaining wall, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking " of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking " including reasonable attorney's fees costs, alleged to have resulted from the location of the six-foot wood fence and a six-foot wood fence on a masonry retaining wall within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the six-foot wood fence and a six-foot wood fence on a masonry retaining wall. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the six-foot wood fence and a six-foot wood fence on a masonry retaining wall described in Paragraph 1. Property Owner shall maintain the six-foot wood fence and a six-foot wood fence on a masonry retaining wall in a safe and attractive condition as an encroachment within the City's right-of-way area. The six-foot wood fence and a six-foot wood fence on a masonry retaining wall may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the six-foot wood fence and a six-foot wood fence on a masonry retaining wall the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the six-foot wood fence and a six-foot wood fence on a masonry retaining wall, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the

notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the six-foot wood fence and a six-foot wood fence on a masonry retaining wall, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the six-foot wood fence and a six-foot wood fence on a masonry retaining wall which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the six-foot wood fence and a six-foot wood fence on a masonry retaining wall. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the six-foot wood fence and a six-foot wood fence on a masonry retaining wall described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Thomas E. Capp
701 Glenside Circle
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the six-foot wood fence and a six-foot wood fence on a masonry retaining wall.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

11. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

Steven B. Falk, City Manager

PROPERTY OWNER(S)

Thomas E. Capp

* Notarial Acknowledgment Required.

ATTEST:

Joanne Robbins, City Clerk

Escrow No.: 08-55704200-SV
Locate No.: CACTI7707-7707-5557-0055704200
Title No.: 08-55704200-MK

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAFAYETTE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 17, AS SHOWN ON THE MAP OF GLENSIDE MANOR, FILED JUNE 8, 1948, IN MAP BOOK 35, PAGE 25, CONTRA COSTA COUNTY RECORDS.

APN: 236-012-023

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On July 24, 2009 (Date) before me, Joanne Lee Robbins, notary (Here Insert Name and Title of the Officer),
personally appeared Thomas E. Capp (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

JOANNE LEE ROBBINS
COMM. #1834010
Notary Public-California
CONTRA COSTA COUNTY
My Comm. Exp. FEB 10, 2013

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827